applicant's behalf. Having regard to the hire purchase agreement, the proposal form and the insurance policy as a whole, it is reasonable to infer that the intention of Choong Kok Hing in effecting the policy and of the respondent in issuing the same, was primarily to cover the applicant's interest so long as the applicant was the owner of the tractor in question, although the policy did cover Choong Kok Hing's interest as well. The fact that the respondent has disclaimed any liability to Choong Kok Hing's claim does not affect the applicant's insurable interest in the policy. Monies could still be payable under the policy, and, as such, the applicant is a party to the contract and should be entitled to institute claims against the respondent in its own name.

Even if the applicant is a stranger to the contract of insurance and therefore cannot ordinarily sue on the basis of it, this general rule of law is not absolute and is subject to some exceptions which are definite and recognised. One of these exceptions is where there is a direct agreement to pay to or the respondent constitutes itself as the agent of the third party. This particular exception is illustrated at page 282 of *Sanjiva Row's* commentaries on Indian Contract Act and Law Relating to Tenders, 6th Edition, Volume 1, where the writer said:

"Yet another exception to the general rule is afforded where the promisor, between whom and the stranger no privity exists, creates privity by his personally agreeing with the stranger to pay him direct or becomes estopped from denying his liability to pay him personally."

The other exception is where a trust is created which is illustrated by *Sanjiva Row* at page 278 as follows:

"A third party who is to be benefited under a contract between *A* and *B* acquires equitable rights *ex contractu* if the agreement between the parties is so framed as to make one of them a trustee for the third party. In *Gandy* v. *Gandy* (1885) 30 Ch. D. 57 at 67, Cotton L.J. put the matter thus: 'If the contract, although in form it is with A, is intended to secure a benefit to *B*, so that *B* is entitled to say he has a beneficial interest as *cestui que trust* under that contract; then *B* would, in a Court of Equity, be allowed to insist upon and enforce the contract'."

In the present case, because of the fact that the respondent has taken upon itself in the relevant endorsement to pay the applicant direct in respect of money arising to be paid under the policy, and the fact that the insurance policy was in fact effected for the applicant's benefit, the respondent should be regarded as trustee and/or agent for the applicant. Thus, in *Halsbury's* Laws of England, 3rd Edition, Volume 38, it is stated at page 809 that:

"When a person has property or rights which he holds or is bound to exercise for or on behalf of another or others, or for the accomplishment of some particular purpose or particular purposes, he is said to hold the property or rights in trust for that other or those others, or for that purpose or those purposes, and he is called a trustee. A trust is a purely equitable obligation and is enforceable only in a court in which equity is administered."

Again, at page 822, in dealing with the question of trust in respect of contracts for the benefit of third parties, *Halsbury* states:

"There may be a trust of a contract. If one of two contracting parties contracts expressly as trustee for another person, that third person can enforce the trust. A clear intention to create such a trust must be shown to render it enforceable."

Thus, although as a general rule, a contract cannot be enforced except by a party to the contract, in my view, this case comes within the exceptions to that rule and the applicant is entitled to institute claims against the respondent in its own name.

Under the circumstances, it is my finding that the applicant has rights co-extensive as the said insured Choong Kok Hing in instituting claims in its own name against the respondent arising out of loss of the subject matter, upon which coverage was provided by the respondent by virtue of the endorsement dated June 29, 1968 appearing in the insurance policy. Judgment is, therefore, entered for the applicant in the above terms with costs.

Order accordingly.

Solicitors: *Allen & Gledhill; Shook Lin & Bok.*

LEE HOCK NING v. GOVERNMENT OF MALAYSIA

[F.C. (Ong C.J. (Malaya), Gill and Ong Hock Sim F.JJ.) March 23, 1972]

[Ipoh — Federal Court Civil Appeal No. 66 of 1970]

Contract — Building contract — Breach of — Action against Government to recover monies due and owing — Whether Government protected by statute — Public Authorities Protection Ordinance, 1948, s. 2.

Public Authorities — Limitation of time for filing proceedings — Claim under contract — Contract incidental to public duty — Public Authorities Protection Ordinance, 1948, s. 2.

This appeal concerned the non-payment of monies due and owing under a series of building contracts entered into between the appellant, a building contractor, and the Government of Malaysia.

In the court below, the respondent pleaded section 2 of the Public Authorities Protection Ordinance, 1948. In the result, the learned trial judge merely referred to section 38 of the Government Proceedings Ordinance, 1956, as importing the special period of limitation to the proceedings before him. He accordingly held that the appellant's claim was barred to the extent of $10,749.25.

The building contractor appealed.

Counsel for the respondent contended that as the contract for the building of schools was entered into in the performance of a public duty or was incidental thereto, section 2 of the Public Authorities Protection Ordinance, 1948, applied, so that the action should have been brought within 12 months next after the act, neglect, or default complained of in relation to that contract.

Held, allowing the appeal: (1) the non-payment of monies was not in pursuance of a public duty. Consequently, it could not have come within the provisions of section 2 of the Public Authorities Protection Ordinance, 1948. It is immaterial that the contract may have been entered into for the purpose of performing a statutory duty. If the act complained of is the breach of a contract, the statutory protection of the Ordinance cannot be invoked on the ground that the contract was entered into for the purpose of carrying out duties imposed by the statute;

(2) therefore, judgment must be entered for the appellant in the total sum of $14,589.75 with interest at 6% *per annum.*

Cases referred to:-

(1) *Firestone Tyre & Rubber Co. (S.S.) Ltd.* v. *Singapore Harbour Board* [1952] M.L.J. 145, 147; [1952] A.C. 452, 464.

(2) *Bradford Corporation* v. *Myers* [1916] 1 A.C. 242, 262.

(3) *Griffiths* v. *Smith* [1941] A.C. 170, 208.

(4) *Doyle* v. *Olby (Ironmongers) Ltd.* [1969] 2 All E.R. 119, 121.

(5) *State of Perak* v. *Muthukaruppan Chettiar* [1938] M.L.J. 247, 256.

(6) *Societe Belge* v. *Girdhari Lal* A.I.R. 1940 P.C. 90.

(7) *Sharpington* v. *Fulham Guardians* [1904] 2 Ch. 449.

(8) *Midland Railway Co.* v. *Withington Local Board* (1883) 11 Q.B.D. 788, 794.

(9) *Compton* v. *Council of the County Borough of West Ham* [1939] 1 Ch.D. 771.

(10) *Littlewood* v. *George Wimpey & Co. Ltd.* [1953] 1 All E.R. 583.

FEDERAL COURT.

N. T. Rajah for the appellant.

Abdul Razak bin Dato Abu Samah (Senior Federal Counsel) for the respondent.

The facts so far as they are material to this report, appear sufficiently from the judgment of the Chief Justice.

Ong C.J. (Malaya): The appellant was a building contractor. On May 27, 1963 he entered into a written contract No. 214/63 with the Malaysian Government to construct certain works and buildings for the sum of $23,680. A second contract in writing, No. 227/63, was made on August 7, 1963 between the parties for other works and buildings costing $11,315. The works and buildings under both contracts were duly completed to the satisfaction of the Government. In respect of the first contract, No. 214/63, the Government had withheld as "retention moneys" the sum of $1,184, as it was entitled to do during the "defects liability period" — which in the instant case, was 6 months from date of completion. The completion date was February 3, 1964; hence this sum was lawfully retained until August 3, 1964.

For the second contract, No. 227/63. the appellant had paid the Government a sum of $565.75 as "security deposit" upon acceptance of his tender. This contract was completed by the appellant on February 5, 1964 and, even assuming that a portion of the contract price of $11,315 could have been withheld as retention moneys, the entire sum should have been paid to the appellant by August 5, 1964, together with a refund of his security deposit of $565.75.

On June 14, 1965 the appellant was compelled by the Government's neglect or default in payment, to issue a specially indorsed writ in Civil Action No. 221/65, claiming payment and refund under the two said contracts of the three above-stated sums of $1,184, $11,315 and $565.75, totalling $13,064.75.

By its defence the Government admitted that the appellant had a just claim to the sum of $1,184 under the first contract No. 214/63. But, in respect of the three named sums, totalling $13,064.75, the Government counterclaimed the sum of $370 as agreed liquidated damages for 37 days' alleged delay in completion of the works and a further sum of $15,000 being damages payable by the appellant for breach of a *third* contract, No. 232/63, which was the subject matter of another Civil Action, No. 222/65, filed by the appellant. The counterclaim exceeded the appellant's claims by $780.25.

This third contract, also in writing, was dated August 7, 1963, for the works and buildings specified therein at the tendered price of $30,500. The security deposit required from the appellant, as building contractor, was $1,525 which was paid by him on November 7, 1963. This contract was purportedly terminated by the Government's duly authorised agent, the Senior Executive Engineer, Central Perak, on December 7, 1963 and the execution of the same works and buildings given to another contractor at the contract price of $45,500. The damages counterclaimed under this third contract was accordingly $15,000. The security deposit made by the appellant of $1,525 was admittedly not repaid by the Government.

The defence in both actions pleaded section 2 of the Public Authorities Protection Ordinance 1948, which reads:

"2. Where, after the coming into force of this Ordinance, any suit, action, prosecution or other proceeding is commenced in the Federation against any person for any act done in pursuance or execution or intended execution of any written law or of any public duty or authority or in respect of any alleged neglect or default in the execution of any such written law, duty or authority the following provisions shall have effect —

(a) the suit, action, prosecution or proceeding shall not lie or be instituted unless it is commenced within twelve months next after the act, neglect or default complained of or, in the case of a continuance of injury or damage, within twelve months next after the ceasing thereof;"

This defence was put in issue by the appellant's reply. But, at the trial of the consolidated actions, learned counsel on both sides surprisingly agreed that the section applied, leaving it to the court to decide only whether payment of the contract price claimed in Civil Suit No. 221/65 was barred by the limitation period of 12 months. Entirely lost sight of was the fact that section 2 of the Ordinance only comes into operation when there is some act done "in pursuance or execution or intended execution" of a statutory or other public duty or authority, as also when some neglect or default occurs "in the execution" of a statutory or other duty or authority. This point was never raised at all, the argument being directed by both sides only to the date when the payment should have been due and exigible for the period of limitation to start running. In the result the learned trial judge was content merely to refer to section 38 of the Government Proceedings Ordinance 1956 as importing the special period of limitation to the proceedings before him. He accordingly held that the appellant's claim was barred to the extent of $10,749.25. I need hardly add that in doing so he was wrong.

The simple truth is that the act or default complained of here was non-payment of the moneys due. Can it be said that such non-payment was an act done in pursuance or execution or intended execution of any written law, or of any public duty or authority, or an alleged neglect or default in the execution of

any such law, duty or authority? Even assuming that the contracts in this case were entered into in execution of a public duty — as, of course, are all Government contracts — it was, nevertheless, the non-payment of the contract price, after work was completed to the Government's satisfaction, that was the act or neglect complained of. When the Government, or any other public authority, is sued for the price of goods sold and delivered or for work and labour done, I cannot see how the refusal to pay a just debt can be said to be an act or default in pursuance or execution of a public duty. What had the appellant done to justify the Government's refusal to pay him the contract price? Nothing, but for the counterclaim which failed. The non-payment, therefore, was not in pursuance of a public duty: consequently it could not have come within the provisions of section 2. As Lord Tucker said in *Firestone Tyre & Rubber Co. (S.S.) Ltd.* v. *Singapore Harbour Board*: [1]

"It is essential to the protection afforded by the statute that the act or default in question should be in the discharge of a public duty or the exercise of a public authority. This assumes that there are duties and authorities which are not public. (See *per* Lord Buckmaster in the *Bradford Corporation* case.)

In *Bradford Corporation* v. *Myers*[2] Lord Shaw of Dunfermline said:

"It is not enough that the neglect occurs in the doing of a thing which is authorized by statute, but the thing done is not every or any thing done but must be something in the execution of a *public* duty or authority, and it is only neglect in the execution of any *such* duty or authority that is covered by the statute. This restriction appears to me to be vital. The Act seems to say:— there are many things which a public authority, clothed, say, with statutory power, may do, which the limitation will not cover; but when the act or neglect had reference to the execution of their public duty or authority — something founded truly on their statutory powers or their public position — to that, and that only, will the limitation apply. I gather that this is the view taken by my noble and learned friend on the woolsack, and while I concur in his views as a whole, I express my pointed agreement with him on this head."

In another decision of the House of Lords, *Griffiths* v. *Smith*[3] Lord Porter, referring to contracts entered into by a public authority, said:

"In support of this argument such cases as *Bradford Corporation* v. *Myers*[2] and *Hawkes* v. *Torquay Corporation* [1938] 4 All E.R. 16. were called in aid.

Both were cases of contract and I think it is true to say that a private contract even if entered into in pursuance of an Act of Parliament is not thereby protected but an act which is done in performance of a public duty is still done in the execution of a public duty though it is performed through the medium of a contract. The cases last quoted are examples of the former principle. *Edwards* v. *Metropolitan Water Board* [1922] 1 K.B. 291, 299 and *Clarke* v. *Bethnal Green Borough Council* (1939) 55 T.L.R. 519 of the latter."

The above decisions clearly show that in the view taken by counsel and the trial judge of section 2 they were all in error. Such error, of course, can be rectified, notwithstanding the admission of counsel for the plaintiff upon a mistaken view of the law. As Lord Denning M.R. said in *Doyle* v. *Olby Ltd.*: [4]

"We never allow a client to suffer for the mistake of his counsel if we can possibly help it. We will always seek to rectify it as far as we can. We will correct it whenever we are able to do so without injustice to the other side. Sometimes the error has seriously affected the course of the evidence, in which case we can best order a new trial. But there is nothing of that kind here."

(See also *State of Perak* v. *Muthukaruppan Chettiar*[5] and *Societe Belge* v. *Girdhari Lal*[6]).

As to the Government's counterclaim, the trial judge dismissed it on grounds which need not be recounted since there is no cross-appeal against his decision. The appellant's contention in this appeal is that his entire claims should have been allowed in both actions. The figures have not been challenged and the claims are unanswerable. There should be judgment accordingly for the sum of $13,064.75 in the first action and for $1,525 in the second, making a total of $14,589.75. I should add that, in Civil Action No. 221/65, the Government's counterclaim for $370 was never proved. On the other hand, counsel for the appellant had also neglected and failed to prove the general damages claimed in Civil Action No. 222/65. On that score such damages cannot be allowed either.

The judgment of the High Court is accordingly set aside and judgment entered for the appellant in the total sum of $14,589.75. For convenience, I think it will suffice for this sum to carry interest from January 1, 1965 at 6 *per cent. per annum*. The appellant will have the costs of the action and of this appeal.

Gill F.J.: I had the advantage of reading the judgment in draft of the learned Chief Justice which has just been delivered. I entirely agree with the views which his Lordship has expressed and with the reasons which he has given for coming to his conclusion.

The only point taken by counsel for the respondent in support of the judgment of the court below was that as the contract for the building of schools, out of which this action arose, was entered into in the performance of a public duty or was incidental thereto, section 2 of the Public Authorities Protection Ordinance, 1948 applied, so that the action should have been brought within 12 months next after the act, neglect or default complained of in relation to that contract.

I do not consider that point to be of any substance. A short answer to it is that it is immaterial that the contract may have been entered into for the purpose of performing a statutory duty. If the act complained of is the breach of a contract, the statutory protection of the Ordinance cannot be invoked on the ground that the contract was entered into for the purpose of carrying out duties imposed by the statute (see *Chartress* on Public Authorities Protection Act, 1893, page 38). Section 2 of our Ordinance is in *pari materia* with the relevant provision in the English Act.

The leading authority on the statement of the law which I have just referred to is the case of *Sharpington* v. *Fulham Guardians*.[7] That was a case in which an action was brought by a builder to recover by way of damages the cost of extra work caused by negligence and repeated changes of plans on the part of the defendants. The works constructed by the defendants

were required by them for the purpose of carrying out their public duties, but it was held that the claim related to a private duty arising out of a contract and not to any negligence in performing a statutory duty, and that the Public Authorities Protection Act, 1893, did not apply. Farwell, J., said at pages 454-455:

"Public authorities now perform many functions which compel them to enter into all sorts of contracts; but this is the first time it has been suggested that on any construction the Act could apply to contracts of this nature. The defendants' counsel had not the courage to follow their argument to its logical conclusion, and say that every contract entered into by a public body is within the Act. But every contract entered into by a public body is necessarily in a sense entered into in discharge of a public duty or under statutory authority, for otherwise it would be *ultra vires*. And I think it would necessarily follow, if I decided in the defendants' favour, that every contract entered into by a public authority is an act done in pursuance of a public duty or authority, and therefore is one to which the Act applies. I do not see where to draw the line."

After considering and distinguishing several cases cited on behalf of the defendants, the learned judge continued at page 456:

"The present case seems to me quite different. The public duty which is here cast upon the guardians is to supply a receiving house for poor children; a breach or negligent performance of that duty would be an injury to the children, or possibly to the public, who might be injured by finding the children on the highway. In order to carry out this duty they have power to build a house or alter a house, and they accordingly entered into a private contract. It is a breach of this private contract that is complained of in this action. It is not a complaint by a number of children or by a member of the public in respect of the public duty. It is a complaint by a private individual in respect of a private injury done to him. The only way in which the public duty comes in at all is, as I have pointed out, that if it were not for the public duty any such contract would be *ultra vires*. But that would apply to every contract. I cannot find any ground for saying that this particular contract comes within the Act. I think it is clear that what is complained of is a breach of a private duty of the guardians to a private individual. The result is that, so far as this section is concerned, the action will lie."

To use the words of Brett, M.R. in *Midland Railway Company* v. *Withington Local Board*: [8]

"Where an action has been brought for something done or omitted to be done under an express contract, the section does not apply; according to the cases cited an enactment of this kind does not apply to specific contracts."

That was a case in which the objection taken was that the action was brought without giving notice of action as required by section 264 of the Public Health Act, 1875, but the principle is the same. Brett, M.R. went on to say at page 794:

"Again, when goods have been sold, and the price is to be paid upon a *quantum meruit*, the section will not apply to an action for the price, because the refusal or omission to pay would be a failure to comply with the terms of the contract and not with the provisions of the statute."

On the cases decided under the Public Authorities Protection Act, 1893 it would appear to be settled law that where the act complained of is purely a breach of agreement there is no right to protection. As far as this case is concerned, what was the only act complained of? The non-payment of money under a series of contracts. How can it be said that such non-payment was an act done in pursuance or execution or intended execution of any statute, or of any public duty or authority, or an alleged neglect or default of any such act, duty, or authority? The fact is that the Ordinance, under which it is sought to deny liability on the ground of non-compliance with a provision of that Ordinance as regards the period within which the action should be brought, deals with cases of some wrong done by a public authority, whereas in the present case the action is based on a contract to pay.

In my judgment the cases cited by counsel for the respondent do not support his proposition. The first of such cases is *Compton* v. *Council of the County Borough of West Ham*[9] the headnote to which reads:

"If a local authority commits any breach of a contract which, under an Act of Parliament, it is its duty to make, then it can claim the protection of the Public Authorities Protection Act, 1893, if any action or proceeding against it for the breach of such a contract is not brought within the limit of time laid down by the Act."

The facts in that case were that a local authority had appointed a relieving officer for a general relief district in its area. This was an appointment which they were bound to make under statutory authority. The relieving officer was absent from his duties owing to illness for six consecutive months. On an action by him to be paid the full amount of his salary for the entire period of absence, the local authority having only paid him half his salary for the last three months of his absence, it was held that this claim was barred under section 1 of the Public Authorities Protection Act, 1893 in respect of moneys which became due to him more than six months before the issue of the writ. In the course of his judgment in the case, Crossman J. said at page 778:

"I think that a breach of a contract which a public authority is by statute bound to make does come within the Public Authorities Protection Act, 1893, and as the defendant council was by art. 142, sub-cl. 1, of the Public Assistance Order, 1930, bound to make the appointment of the plaintiff, I hold that an action for breach of the terms of that appointment is an action within s. 1 of the Act of 1893. Art. 142 is this: 'The Council shall appoint a district medical officer for every medical relief district and a relieving officer for every general relief district formed pursuant to article 20.' So that the appointment of the plaintiff was an appointment which the defendant council was bound to make under the Act. The action here has arisen in consequence of that appointment, and I hold that s. 1 of the Act applies to the action which is to remedy a breach of a contract which the defendant council was bound to make in pursuance of the Poor Law Act of 1930 and the regulations thereunder."

The next case is the case of *Firestone Tyre and Rubber Co. (S.S.) Ltd.* v. *Singapore Harbour Board*[1] the headnote to which says:

'It is essential to the protection afforded by enactments prescribing limitation of action for the protection of public authorities that the act or default in question should be in the discharge of a public duty or the exercise of a public authority. In deciding whether the duty or authority has this public quality it is sometimes relevant to consider whether it arises out of or is imposed by a contract voluntarily entered into by the public authority with an individual with whom it is under no obligation to contract. The mere fact, however, that in the discharge of its duty or the exercise of its authority the public authority may have made a contract does not of itself deprive the duty or authority of its public quality. The existence or absence of a contract is not a decisive test. Effect must be given to the word 'authority'. This excludes the test of obligatory as opposed to permissive powers."

The facts of that case were that the respondent board, a public authority constituted under a local

Ordinance, were authorised to construct, maintain and repair docks and wharves and to carry on, *inter alia*, the business of wharfingers and warehousemen at the Port of Singapore, and to levy rates for the wharfage and storage of goods. In an action by the appellants against the board for damages for the loss of goods, the property of the appellants, which had been received by the board in one of their warehouses, but not delivered to the appellants, the board claimed that the action, not having been commenced within the prescribed period of limitation after the acts complained of, was barred by section 2(2) of the Public Authorities Protection Ordinance of the Straits Settlements, which was in substantially the same terms as the Limitation Act, 1939, section 21(1). It was held that the board having exercised their power to carry on the trade of wharfingers and warehousemen did not thereby cease to function as a harbour board and undertake some trading activity of a non-public and purely subsidiary nature; they were supplying facilities essential to the shipping community in one of the ways authorised by the Ordinance by which they had been created a harbour board charged with the management and control of the port, and were thus fulfilling one of the main purposes for which they had been given statutory powers; and, therefore, they were entitled to the protection of the Ordinance. Lord Tucker in delivering the judgment of their Lordships of the Privy Council said at page 225:

"... the existence or non-existence of a contract is not a decisive test, and on the facts in the present case their Lordships are clearly of opinion that the question of contract is immaterial to their decision since, on any view, the board were exercising their permissive powers to perform a normal function of a harbour board, and in so doing were providing a service essential to the shipping and commercial community of Singapore, and, accordingly, were entitled to the protection of the Public Authorities Protection Ordinance."

The third case relied on by counsel for the respondents is the case of *Littlewood* v. *George Wimpey and Co., Ltd., British Overseas Airways Corporation.*[10] That case clearly does not apply to the instant case, as the action there was for damages for negligence against the first defendants and for negligence and/or breach of statutory duty against the corporation. The judge found that the first defendants' servant had been negligent and that the corporation were in breach of their statutory duty to provide a safe system of work and that the work on which the plaintiff was engaged when he was injured was incidental to and necessary for the performance by the corporation of their public duty.

Ong Hock Sim F.J. concurred.

Appeal allowed.

Solicitors: *Maxwell, Kenion, Cowdy & Jones.*

KUMARASAMY v. HAJI DAUD

[O.C.J. (Syed Othman J.) April 1, 1972]

[Johore Bahru — Summons in Chambers No. 34 of 1971]

Company — Winding-up — Judgment creditor — Execution — Postponement — Right of creditor — Discretion of court — Costs — Companies Act, 1965, s. 299.

This was an application by the liquidator of Bunga Raya Chemical Co. Sdn. Bhd. for an order that the execution proceedings to recover the taxed costs, be set aside and that the sum of $711 paid by the applicant to the bailiff to prevent the seizure of his car, be refunded.

The question to be determined was whether, in the circumstances of this case, the applicant liquidator was personally liable for the taxed costs.

Held, dismissing the application: all the indications showed that it was the applicant, who, acting on his own, was responsible for staying a sale which the court had ordered. From his own affidavits, the applicant could not be said to have been acting in good faith and with a sense of responsibility to his duties. His action caused the respondent to apply to the court for his rights to be set aside. When the court made the order, he was the one who was ordered to pay the costs. He was, therefore, personally responsible.

Cases referred to:-

(1) *Stead Hazel & Co.* v. *Cooper* [1933] 1 K.B. 840.

(2) *In re Grosvenor Metal Co. Ltd.* [1950] 1 Ch. 63.

SUMMONS IN CHAMBERS.

U. Masacorale for the applicant.

L. M. Ong for the respondent.

Cur. Adv. Vult.

Syed Othman J.: This is an application by the liquidator of Bunga Raya Chemical Co. Sendirian Berhad (the applicant) for an order that the execution proceedings to recover the taxed costs be set aside and that the sum of $711 paid by the applicant to the bailiff to prevent the seizure of his car to be refunded.

These are the circumstances leading to the application. The respondent had obtained leave to sign final judgment against Bunga Raya Chemical Co. Sendirian Berhad (the company) for the sum of $28,066.34 together with interest. On a writ of seizure and sale being issued the bailiff seized movable goods belonging to the company. Then on an application for summons for directions, the court ordered, *inter alia*, that the sale by public auction of all movable property be fixed on 2nd August, 1970. On 23rd July, 1970 Messrs. Wang, Kumarasamy & Co., of which the applicant is a partner, wrote to the bailiff advising him that the company had passed a special resolution going into voluntary liquidation on 22nd July, 1970 and had appointed the applicant as liquidator and asked the bailiff to release all the goods that had been seized. Acting under section 299(1) of the Companies Act, 1965 the bailiff released the goods. So far as is relevant to this case the sub-section reads:

"Subject to the provisions of sub-section (3) of this section where any goods of a company are taken in execution and before the sale thereof... notice is served on the bailiff that... a resolution for voluntary winding-up has been passed, the bailiff shall, on being so required deliver the goods and any money seized... to the liquidator".